

STATE OF MICHIGAN
COURT OF APPEALS

FRANK ERIC CALLICO, JR.,

Plaintiff/Counterdefendant-
Appellee,

v

PATRICIA O'NEAL CALLICO,

Defendant/Counterplaintiff-
Appellant.

UNPUBLISHED

June 21, 2005

No. 259237

Macomb Circuit Court

Family Division

LC No. 03-001223-DM

Before: Gage, P.J., and Whitbeck, C.J., and Saad, JJ.

PER CURIAM.

Defendant appeals a judgment of divorce in which the trial court awarded plaintiff sole physical and legal custody of two minor children. We affirm.

Defendant says that the trial court erred in its findings of fact and the weight it accorded to the statutory best interest factors, MCL 722.23(a), (b), (e), (i) and (j).¹ To determine the best interests of the children in custody disputes, the trial court must consider all factors enumerated in MCL 722.23(a) through (l),² and state its findings and conclusion on each of the factors.

¹ We review a trial court's factual findings under the great weight of the evidence standard and we will sustain those findings unless "the evidence clearly preponderates in the opposite direction." *Foskett v Foskett*, 247 Mich App 1, 5; 634 NW2d 363 (2001). We review discretionary rulings, such as the determination on the issue of custody, for an abuse of discretion. *Id.*

² The factors under MCL 722.23 include the following:

(a) The love, affection, and other emotional ties existing between the parties involved and the child.

(b) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.

(continued...)

Foskett, supra, p 9. It is also well-settled that the court is not required to give each factor equal weight. *McCain v McCain*, 229 Mich App 123, 131; 580 NW2d 485 (1998).

A. Emotional Ties to the Children

MCL 722.23(a) requires the court to consider the “love, affection, and other emotional ties existing between the parties involved and the child.” The trial court correctly determined that neither party was favored under this factor. Testimony established that the children bonded with both parents and that both parents had a significant emotional attachment to the children. The only testimony that in any way suggested that plaintiff showed “indifference” to the children came from defendant’s mother-in-law from a previous marriage. Given the witness’ potential bias and her admission that she had little opportunity to see plaintiff with the children, we conclude that the trial court did not err in assessing this factor.³

(...continued)

(c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.

(d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

(e) the permanence, as a family unit, of the existing or proposed custodial home or homes.

(f) The moral fitness of the parties involved.

(g) The mental and physical health of the parties involved.

(h) The home, school, and community record of the child.

(i) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.

(j) The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents.

(k) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.

(l) Any other factor considered by the court to be relevant to a particular child custody dispute.

³ Moreover, as we have repeatedly stated, trial courts are in a superior position to make accurate determinations regarding custody. *Fletcher v Fletcher (After Remand)*, 229 Mich App 19, 28; (continued...)

B. Capacity for Affection and to Continue Education

The trial court also concluded that neither party was favored under factor (b), under which it considers the “capacity and disposition of the parties involved to give the child love, affection, and to continue the education and raising of the child in his or her religion or creed, if any.” MCL 722.23(b). Evidence showed that both parties participated in the children’s education and schooling, that plaintiff took part in church activities with the children, and that defendant volunteered as a Girl Scout troop leader. The evidence did not clearly preponderate in defendant’s favor on this factor and, therefore, we reject her assertion of error. *Foskett, supra* at 5.

C. Permanence of the Family Unit

Factor (e) focuses on “[t]he permanence, as a family unit, of the existing or proposed custodial home or homes.” MCL 722.23(e).⁴ The trial court ruled in favor of plaintiff on this factor because of his predominant role in his children’s lives over the prior year and defendant’s unpredictable and uncertain future plans. Evidence showed that plaintiff maintained a permanent residence for the children and there were no allegations that plaintiff had anyone living in the home other than the children. On the other hand, the record reflects that defendant moved several times over the course of the previous year, the permanency of her current living situation was suspect, and evidence was contradictory and inconclusive regarding her living arrangement and relationship with her ex-husband. This Court has held that the stability of a child’s home is undermined by “frequent moves to unfamiliar settings, a succession of persons residing in the home, live-in romantic companions for the custodial parent, or other potential disruptions.” *Ireland v Smith*, 451 Mich 457, 465 n 9; 547 NW2d 686 (1996). In light of the foregoing, the trial court’s decision that this factor favored plaintiff is clearly supported by the record.

Defendant asserts that, due to his work schedule, plaintiff’s child care arrangements were disruptive and caused instability. Evidence showed that, during some work hours, the children’s paternal grandmother and great-grandmother cared for them. While the trial court noted its concern about plaintiff’s availability as a primary caretaker, plaintiff testified that he could structure his work schedule to minimize his time away from the children. Though, at the time of trial, plaintiff had not demonstrated his ability to routinely secure an alternative work schedule, defendant did not rebut his assertion that he could do so. Moreover, after judgment was entered, plaintiff modified his work schedule. Importantly, factor (e) concerns the “permanence” of the custodial home and not its “acceptability.” This Court has previously stated that:

[A]n evaluation of each party’s arrangements for the child’s care while her parents work . . . is not an appropriate consideration under this factor. We find the trial court committed clear legal error in considering the ‘acceptability’ of the

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581 NW2d 11 (1998).

⁴ Factor (e) “exclusively concerns whether the family unit will remain intact,” *Fletcher v Fletcher*, 200 Mich App 505, 517; 504 NW2d 684 (1993), aff’d in part and rev’d in part on other grounds 447 Mich 871, 884-885 (1994), and primarily addresses the “child’s prospects for a stable family environment” *Ireland v Smith*, 451 Mich 457, 465; 547 NW2d 686 (1996).

parties' homes and child-care arrangements under this factor, which is directed to the 'permanence, as a family unit,' of the individual parties. 'This factor exclusively concerns whether the family unit will remain intact, not an evaluation about whether one custodial home would be more acceptable than the other.' [*Ireland, supra*, pp 462-463, quoting *Fletcher, supra*, p 517.]

Accordingly, the trial court did not err when it concluded that this factor favored plaintiff based on the stability of his home and the uncertainty of defendant's living arrangements.

D. Preference of the Children

Defendant complains that the trial court failed to adequately consider the preference of the eldest child, pursuant to factor (i). The trial court interviewed the children to determine their ability to state a preference, but the court did not reveal their statements. The court stated, however, that it found the oldest child to be "barely of sufficient age and maturity to express a preference." Therefore, the weight and importance associated with this factor was clearly minimal, and thus, not a decisive factor in the determination of custody. Also, as with all of defendant's arguments, defendant fails to cite any relevant law in support of her position. It is not the responsibility of this Court to "search for law to sustain a party's position when the party fails to cite authority to support a claim." *Lee v Robinson*, 261 Mich App 406, 411; 681 NW2d 676 (2004).

E. Promotion of Parent-Child Relationship

Defendant also asserts that the trial court did not adequately weigh the relevance of factor (j) and plaintiff's alleged unwillingness to promote a "close and continuing parent-child relationship between the child and the other parent." MCL 722.23(j). The trial court noted the importance of factor (j), and determined that both parties were deficient. A review of the trial court record substantiates the trial court's ruling.

Defendant claims that the trial court should have ruled differently because of the absence of any positive statement by plaintiff regarding this issue. Defendant ignores that the majority of the evidence demonstrated that she and the paternal grandmother behaved inappropriately and were unable to put aside their animosity in order to facilitate a good relationship between the children and the other parent. Due to the absence of evidence regarding plaintiff's behavior for evaluation and the trial court's determination that both parties were deficient on this factor, defendant's assertion of error is not supported by the record. The trial court is not required to give equal weight to all the factors, but may consider the relative weight of the factors as appropriate, *McCain, supra*, pp 130-131. Based on the record evidence, the trial court clearly could have weighed this factor more heavily against defendant and, therefore, we reject defendant's claim of error.⁵

⁵ We also reject defendant's claim that the trial court erroneously denied her motion for reconsideration. She did not include this claim in her statement of issues and she did not support (continued...)

Our review of the entire record and our review of the trial court's findings of fact and rulings on the statutory best interest factors supports the trial court's custody ruling.

Affirmed.

/s/ Hilda R. Gage
/s/ William C. Whitbeck
/s/ Henry William Saad

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her argument with citation to legal authority. *Caldwell v Chapman*, 240 Mich App 124, 132; 610 NW2d 264 (2000); *Lee, supra* at 411.